Supreme Court, U.S.
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No. 97-_____

IN THE
SUPREME COURT OF THE
UNITED STATES
October Term, 1997

Alexander Paul and Darlington County, of whom Alexander Paul is
Petitioner,

v.

C.R. Cribb and Vacie S. Cribb,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

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46 pp

QUESTION PRESENTED FOR REVIEW

Is a party denied constitutional due process when a court enters an order based upon an agreement announced by attorneys in open court, when the court refuses to allow the party to speak and the party obviously disagrees with the settlement announced by his attorney?

LIST OF PARTIES

The parties to the proceeding below were the Petitioner, Alexander Paul, Respondents C.R. Cribb and Vacie S. Cribb, together with Darlington County (South Carolina), a co-defendant of Petitioner in the trial court.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Alexander Paul, respectfully prays that this Court issue a *Writ of Certiorari* to review the May 14, 1996 judgment and opinion of the South Carolina Court of Appeals, the June 21, 1996 denial of his Petition for Rehearing, and the November 8, 1996 denial of his Writ of Certiorari by the South Carolina Supreme Court.

OPINIONS BELOW

The Order of the South Carolina Supreme Court dated November 8, 1996 denying Petitioner's Petition for Writ of Certiorari to the South Carolina Court of Appeals is not reported and is reprinted in Appendix A hereto at App. 1, *infra.*

The South Carolina Court of Appeals' denial of Petitioner's Petition for Rehearing dated June 21, 1996 is not reported and is reprinted in Appendix B hereto at App. 3, *infra.*

The Opinion and Judgment of the South Carolina Court of Appeals dated May 14, 1996 affirming the trial court's Order is not reported and is reprinted in Appendix C hereto at App. 4, *infra.*

The Order of the trial court in the South Carolina Court of Common Pleas for the Fourth Judicial Circuit, The Honorable James E. Lockemy presiding, of October 18, 1994 was not reported, and is reprinted in Appendix D hereto at App. 6, *infra.*

STATEMENT OF JURISDICTION

Petitioner seeks review from the Opinion of the South Carolina Court of Appeals of May 14, 1996. Petitioner's

subsequent Petition for Rehearing was denied on June 21, 1996. The Supreme Court of South Carolina denied Petitioner's Petition for Writ of Certiorari on November 8, 1996. The Supreme Court has jurisdiction to review cases in the South Carolina Supreme Court by *Writ of Certiorari* by virtue of 28 U.S.C. § 2104.

CONSTITUTIONAL AMENDMENTS INVOLVED

Petitioner seeks a Writ of Certiorari based upon his due process rights under the 5th and 14th Amendments of the United States Constitution.

STATEMENT OF THE CASE

Petitioner Alexander Paul ("Paul") is a farmer whose farm is located in the County of Darlington, South Carolina. This case involves a dirt road that runs through Paul's farm. Respondents C.R. Cribb and Vacie S. Cribb (the "Cribbs") live along the dirt road and brought this action against Paul and against Darlington County to obtain County maintenance of the road. An earlier order of the trial court had found that the road was a county road (by implied dedication), and ordered the County to lay out the road based upon an eighteen

to twenty-two foot width. That earlier order is not in controversy.

After a continuing dispute between the Cribbs and Paul, the lower court conducted a hearing to determine where the road was to be located, and whether the County could take an additional six feet in width so as to maintain the road as a "two plow" road, with a three foot shoulder on each side.

During the hearing, Paul's attorney (identified as Ms. Holloway in the transcript) took virtually no part. Rather than issuing an order, the court held a private conference, with the attorneys only following which the attorneys announced that they had entered into an agreement. The agreement was read into the record. Paul immediately asked the court to be permitted to speak, evidently to object to the purported agreement which had been announced by his attorney. The court refused to hear Paul's objections:

Mr. Paul: Let me say one thing, judge.

The Court: I'm not sure I want to let you say one thing.

Mr. Paul: This is a case that would make the founding forefathers of this Country's bones, dried bones,

get up and tremble in their graves.

The Court: Yes, sir. I pledge allegiance to the flag. Okay. Everybody, that's enough. Thank you very much. This case is over.

Paul appealed, *pro se*, asserting, among other things, that his property was being taken unconstitutionally. The Court of Appeals affirmed, based upon Paul's failure to raise the constitutional issues below. The South Carolina Court of Appeals denied Paul's motion for reconsideration, and the South Carolina Supreme Court denied his petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT

THE LOWER COURT VIOLATED PETITIONER'S DUE PROCESS RIGHTS BY TAKING HIS PROPERTY BASED UPON A PURPORTED SETTLEMENT ANNOUNCED BY HIS ATTORNEY, AND BY REFUSING TO HEAR PETITIONER'S OBJECTIONS TO THE SETTLEMENT

This case is important because it goes to the heart of the constitutional due process guarantee: the individual's right to be heard in court. Although the record is limited because the trial court refused to hear Paul, there is no question that Paul was vehemently opposed to the terms of the settlement

that his attorney had just announced in court. The question presented by this case is whether a trial court may enter a purported agreement in an order in the face of evident opposition to that agreement by the party himself, and whether the court may refuse to hear a party's objections to an agreement announced by his attorney.

This Petition does not challenge the general rule in South Carolina (as in many jurisdictions) that a party is bound by his attorney's statements and agreements affecting a pending case. *Arnold v. Yarborough*, 281 S.C. 570 (Ct. App. 1984). It is an attorney's job to speak for a client and, absent an obvious disagreement, the court and other parties should be able to rely upon the attorney's statements.

An attorney's ability to act on behalf of her client, however, varies with the situation. Generally, tactical decisions concerning presentation of a case may be made by an attorney without even consulting her client. In contrast, this Court has recognized that certain important decisions belong to the client alone. Thus, in criminal cases, "the accused has the ultimate authority to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal." *Jones v. Barnes*, 463 U.S. 745 (1983). For

extremely important decisions, such as the decision to plead guilty, this Court has recognized that an attorney may not speak for his client without prior consultation. *Boykin v. Alabama*, 395 U.S. 238, 242-44 (1969). Thus, it is the practice of trial courts to examine defendants directly when taking a guilty plea, and not to merely rely upon representations by their attorneys.

In other cases, although particular decisions may ultimately belong to the client, trial courts typically rely upon representations of counsel without independently verifying the client's consent. However, courts have recognized that in extraordinary situations, when the client clearly was not consulted at all, it is improper to accept from counsel a decision that should have been made by her client. *Peek v. Kemp, 746 F.2d 672 (11th Cir. 1985)*. In contrast, when counsel enters into a stipulation in the presence of a party who expresses no dissent, it may be effective and binding upon the party. *Leser v. United States*, 358 F.2d 313 (9th Cir. 1966).

In the present case, the situation is entirely different. Despite the importance of the agreement the parties purportedly entered into, the court relied entirely upon representations of counsel. What makes this case egregious is the fact that the court did so in the face of Petitioner's

obvious unwillingness to enter into such a settlement. Instead, the court refused to allow Petitioner to speak, and faceciously remarked "I pledge allegiance to the flag . . .." The court then announced that the case was over and adjourned.

This case is important because it involves a situation that arises frequently in practice. Often, as a case progresses, the court appropriately exercises its discretion in seeking to lead the parties to a settlement. Not infrequently, this takes the form of an *in camera* discussion involving the court and the attorneys, and excluding the parties. Any trial attorney is familiar with the hurried conference between attorneys and clients which frequently follows, immediately after which the attorneys announce a settlement has been reached. While this process is a common one and typically leads to reasonable compromises, the integrity of the process depends upon the individual parties giving their actual willing and informed consent to the settlement that is announced. When a court refuses to allow a party to be heard, instead choosing to force a case to close through a purported agreement, a fundamental due process right is violated.

Very briefly, the underlying rights of Petitioner are also important ones. The lower court had previously found

that the dirt road through Petitioner's farm was a public one, and Petitioner does not seek to challenge that finding. However, the order challenged here by Petitioner relocated the road to a place that it clearly had never been in the past, and also widened it. The evidence at the hearing addressed the question of how wide the road "needed" to be to constitute a "two plow" road. There was no evidence as to how wide the road actually had been in the past, and the County testified that it actually maintained roads as narrow as ten to twelve feet. Petitioner should be compensated for the taking of any property that was not included in the original dirt road across his farm.

Unfortunately, the trial court cut the proceeding short by forcing the attorneys to announce a settlement and refusing to hear Petitioner's objections to the settlement. Petitioner's appeal proceeded *pro se*, and failed when the South Carolina Court of Appeals determined that the constitutional issues had not been raised below. How may a party preserve an issue for appeal when the court refuses to allow the party to speak, and encourages the attorneys to conclude the case within an agreement to which the client refuses to subscribe?

CONCLUSION

For the reasons stated above, this *Petition for Writ of Certiorari* should be granted, and the Court should allow the Petitioner to file his Brief in order to set forth in greater detail the legal and factual basis of his claim. If this Petition is not granted, Petitioner and other similarly situated litigants will continue to suffer due process violations when they are denied the right to speak and their attorneys meet with courts behind closed doors.

Respectfully submitted,

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February 6, 1997

APPENDIX A

The Supreme Court of South Carolina

NOVEMBER 8, 1996

Mr. Alexander Paul
1700 Greenfield Road
Darlington, SC 29504

Re: Cribb v. Paul, et al.
Case No.: 89-CP-16-431

Dear Mr. Paul:

The Court has issued the following Order on yoru Petition for a Writ of Certiorari in the above-referneced matter:

"Petition for Writ of Certiorari denied.

by s/E. C. Burnett, III, A.J.
For the Court

November 08, 1996."

By copy of this letter we are forwarding the itemized Statement of Costs filed in this matter to the Court of Appeals

and also advising all itnerested parties of the action of the Court in this matter.

Very truly yours,

Clerk

CND,jr/SBM
cc: John M. Milling, Esquire
James Lucas, Esquire
The Honorable Kenneth A. Richstad (w/enclosure)
The Honorable Paulette Lowe
West Publishing Company

APPENDIX B

THE SOUTH CAROLINA COURT OF APPEALS

C.R. Cribb and Vacie S. Cribb,
Respondents,

v.

Alexander Paul and Darlington County, of whom Alexander Paul is Appellant.

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After careful consideration of the petition for rehearing, this court is unable to discover any material fact or principle of law that has been either overlooked or disregarded, therefore ordered the petition for rehearing be denied.

Jasper W. Curton

C. Tolbert Goolsby

Ralph King Anderson, Jr.

APPENDIX C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

C.R. Cribb and Vacie S. Cribb,
Respondents,

v.

Alexander Paul and Darlington County, of whom Alexander Paul is Appellant.

Appeal from Darlington County
James E. Lockemy, Judge

Unpublished Opinion No. 96-UP-144
Submitted May 7, 1996 - Filed May 14, 1996

AFFIRMED

Alexander Paul, of Darlington, pro se.

John M. Milling, of Darlington, for respondents.

James H. Lucas, of Hartsville, for Darlington County.

PER CURIAM: Alexander Paul appeals from an October 18, 1994 order concerning the reopening of Round O Road, claiming the trial court erred by incorrectly interpreting a prior court order that defined the width of the road and affirming a prior court order finding no liability to the county for working Round O Road. We affirm pursuant to Rule 220 (b) (2), SCACR, and the following authorities: Issue I: Townes Assocs. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976) (in a law case tried without a jury, appellate review is limited to correction of errors of law and a determination as to whether there is any evidence to support the trial court's factual findings); McCoy v. McCoy, 283 S.C. 383, 323 S.E.2d 517 (1984) (constitutional objections cannot be raised for the first time on appeal); Issue II: Resolution Trust Corp. v. Eagle Lake and Gold Condominiums, 310 S.C. 473, 427 S.E.2d 646 (1993) (a ruling not appealed becomes the law of the case).[1]

AFFIRMED.

CURETON, GOOLSBY, AND ANDERSON, JJ., concur.

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[1] Because oral argument would not aid the court in resolving the issues, we decide this case without oral argument.

APPENDIX D

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON) CASE NO.: 1989-CP16-431

C.R. Cribb and Vacie S. Cribb,

Plaintiffs,

v. ORDER

Alexander Paul and Darlington County,

Defendants.

This matter was heard by the undersigned on Wednesday, September 14, 1994, and the hearing was concluded on Monday, September 19, 1994. The Plaintiffs in this matter are represented by Mr. John M. Milling. The Defendant, Alexander Paul, is represented by Ms. W. Carole Holloway, and the Defendant, Darlington County, is represented by Mr. James M. Lucas. The issues, which were presented to the Court, dealt with the location of the Round O Church Road. This was a County road that previously existed but had been closed by the Defendant, Alexander Paul, and had not been worked by Darlington County for a number of

years. There was a dispute as to where the road should be located when the County once again began working the same. The Court was also requested to deal with the question of the width of the road as provided for in the prior Order of Judge Lewis. This prior Order had called for the road to be eighteen (18') to twenty-two (22') feet in width, with enough shoulder to push the dirt from the plowing activity onto the same. The Court was also presented with the question of whether or not certain posts that had been located along the edge of the proposed area for locating the Round O Church Road constituted a hindrance. There was also a question of who would be the owner of the strip of land lying between the County road once it was reopened, and certain property belonging to Bonita L. Cribb.

The Court took testimony with respect to this matter from witnesses and two different surveyors. One of these witnesses was Mr. Bobby Richardson, who is the road maintenance supervisor. His testimony revealed that, in addition to the scraped area for a road, it is necessary that there be three (3') feet on either side of the road to handle the dirt that would be pushed up. He also testified that the posts which had ben located by Mr. Paul, would constitute a hazard in attempting to open and maintain the Round O Church

Road. He also offered testimony as to where the road had been at the time it was previously being maintained by Darlington County.

Prior to the Court announcing its decision in the matter as to where the road would be located, the parties advised the Court that they had reached an agreement as to the same. The parties agreed to follow the location of the road as proposed by Darlington County. At the point where the road ran in front of the property of Bonita L. Cribb, the parties agreed to use the map proposed by Darlington County and to add to the width of the area shown in front of this home a distance of six (6') feet, making a right-of-way of twenty-seven and nine-tenths (27.9') feet, and that the Round O Road would be located within that right-of-way area.

The Court finds that, with respect to the interpretation of the Order of Judge Lewis, it is a proper interpretation that there should be, in addition to the scrapped road area which will vary in width between eighteen (18)' and twenty-two (22') feet added thereto an additional six (6') feet to handle the dirt pushed up from the process of maintaining the road. Accordingly, there shall be added to the dimensions shown on the County map an additional six (6'), and that combined area shall constitute the right-of-way which the County has for the

purpose of maintaining this road as a "two-plow road."

The Court also finds that the posts that were placed by Mr. Paul are a hindrance to the reopening of the road and would constitute a danger if allowed to remain. Mr. Paul shall have his obstructions removed from their location by October 25, 1994. Thereafter, he shall not place posts or fencing or any other objects in the area provided as the right-of-way for the Round O Church Road.

As previously stated, the parties have reached an agreement as to the location of the road in front of the home of Bonita L. Cribb. By virtue of this agreement, there will be no strip of land between her property and that constituting the right-of-way to Darlington County for the maintenance of the Round O Church Road. Accordingly, there is no decision which the Court needs to make relative to the ownership of that strip of land.

IT IS, THEREFORE,

ORDERED:

1. That the location of the Round O Church Road shall be as shown on the map prepared for Darlington County and introduced herein as its Exhibit. That map, however, is modified to provide that there shall be added to it an additional six (6') feet in Order to handle the dirt that will be

pushed to the side by the reopening and maintenance of the Round O Church Road. That the location of the stakes on the corners of the Bonita L. Cribb property shall constitute the outermost area of the right of way which shall be twenty-seven and nine-tenths (27.9') feet in front of her home, and the road shall be located in said right-of-way. With respect to other portions of the road, as located by the County on its map, the additional six (6') feet shall be added to whichever side of the road that would facilitate its reopening by Darlington County. Darlington County shall re-stake the road and have the new stakes in place by October 10, 1994.

2. That the posts and fencing, which have been located along the proposed location of the reopening of the Round O Church Road by Mr. Paul, shall be removed by October 25, 1994. Mr. Paul shall not locate any obstruction within the right-of-way provided to Darlington County in connection with the Round O Church Road.

3. That Darlington County shall begin, weather permitting, reopening the Round O Church Road on October 26, 1994, and shall continue to maintain the same as provided for in the Order of Judge Lewis, dated November 12, 1990. There will be no liability to the County in connection with its

reopening and working the road as provided for in the Order of Judge Lewis.

JAMES E. LOCKEMY,
Presiding Judge

This 18 day of October, 1994.
Dillion, South Carolina

APPENDIX E

Motions Hearings of September 14, 1994

Opening Statements . . . Mr. Lucas Page 46, Lines 13-25

The Court: Well, that may be so, Mr. Lucas, but I'm sure you understand that if a definite Order has got to be made, a definite footage has got to be put there, and you can't say during the dry time it's got to be such and such, the other times it's such. It's got to be the same footage at all times. So what is the County's position that a distance for a spray is needed from the roadway?

Mr. Lucas: Judge, to accommodate a -- I guess a maximum spray period, for lack of a better term, I've talked with Mr. Richardson who is the County Road Supervisor, and he informs me that three feet on either side should be sufficient even during a very heavy period.

Page 47, Lines 1-20

The Court: So you're saying you need three feet in addition to the roadway -- actual roadway?

Mr. Lucas: That would be correct, Your Honor. And again, that's an estimate.

The Court: What is -- is there any problem with the road that would be fifteen feet wide? Say, for example, if you need three feet in Ms. Holloway's position that the spray was included in the figure, and you have some distance of the road is only eighteen feet wide; right?

Mr. Lucas: Yes, sir.

The Court: So at some places you only have fifteen feet.

Mr. Lucas: The County maintains roads with as small as ten, eleven and twelve feet, so we would -- obviously, the County would rather it be larger, but there's no subdivision regulation or rule that would provide in this case that the road could not be that size.

Page 51, Lines 9-25

The Court: Let me ask you this, Mr. Lucas. The cross ties, you won't actually be plowing over in that area, will you? If they were level, would that not be just sufficient?

Mr. Lucas: Well, Judge, to the extent that you would not have to go in and provide for any ditching or any maintenance to the spray area which oftentimes you may need to do.

The Court: You're going to do all of that within the three feet, too?

Mr. Lucas: Yes, sir. And we're not -- this road has never been ditched before, but the extent -- and maybe I shouldn't use the word ditching, but that extent we would have to provide some additional maintenance in that area, it would be difficult to get in there and actually do it. And besides, I think it would probably be a little dangerous to try to take a mobile grader and run it in there.

Page 52, Lines 1-25

The Court: Let me ask you this. Why, then, -- why, then, would you all put stakes just for the width of the road? I mean, the Highway Department puts those stakes the width of the right of way. Why would you not have put the stakes the width of what you thought the right of way would be?

Mr. Lucas: Well, Judge, because we were unclear at that time as to whether or not the spray was included or excluded.

The Court: So you took the position that it was not included -- or it was included?

Mr. Lucas: Yes, sir, we took the position that it was excluded.

The Court: Then why would you put the stakes where they were?

Mr. Lucas: Because the stakes delineated just the eighteen to twenty-two feet portion and not the spray area.

The Court: I know that, but please correct me if I'm wrong, because I'm not an engineer by any form of the way, but if in fact you think you need three feet for a spray, why then would you not put your stakes with the three feet and the eighteen to twenty-two so you'd have all of the width you needed?

Page 53, Lines 1-17

Mr. Luc . Judge, I guess what we initially --

The Court: Why put the stakes exactly the measure of the road when you need three more feet?

Mr. Lucas: Well, we didn't know at the time if that was exactly the measure of the road or not. If you had concluded, Judge, that that was inclusive of the spray area, then that would --

The Court: Then why did y'all act as if it was inclusive?

Mr. Lucas: Judge --

The Court: By putting stakes down, you're almost acting that way, aren't you?

Mr. Lucas: Well, Judge, we had to do one or the other, and for purposes of discussion, we did put them at the area shown on the plat.

Ferrell Prosser - Cross by Mr. Lucas. Page 84, Lines 13-16

Mr. Lucas: Sir, I don't think I have any further questions.

The Court: Okay. Ms. Holloway?

Ms. Holloway: Nothing, your Honor.

Ferrell Prosser - Redirect by Mr. Milling. Page 87, Lines 16-22.

Mr. Milling: Okay. No further questions of this witness.

The Court: Mr. Lucas, anything else?

Mr. Lucas: Nothing further, your Honor.

The Court: Ms. Holloway?

You may step down. I need to recess this hearing.

Transcript of Record, Continuation of hearing, September 19, 1994 Opening Statement from Mr. Milling. Page 88, Lines 1-23

The Court: This is a continuance of the hearing of C.R. Cribb and Vacie S. Cribb versus Alexander Paul and Darlington County. At the time the only issue I'm looking into is the width and place or position of a road that is -- I think is it called the Round O Road is the name of it?

Mr. Milling: Yes, your Honor.

The Court: And portions of it is set but there's a portion of it hasn't been used in a while. And according to the previous orders. It was to be reopened. And the only issue right now is what distance shall it have and also exactly where will the road be placed.

We had a hearing last week at which time Mr. Milling called a witness who was a private surveyor who had done some surveying there in the '60's. Also --

Mr. Milling: If your Honor please. I need to make a correction for the record. Mr. Prosser (phonetic) pointed out to me that I think it may have been the early '80's when those surveys were done. When he went back and looked at his notes, he just looked at them wrong.

The Court: He did say the '60's.

Mr. Milling: He did say the '60's, yes, sir.

The Court: Okay. It was really early '80's when he did the surveys or he surveyed -- correction on it.

Bobby Richardson, Direct Page 90, Lines 6-25

Bobby Richardson, being first duly sworn, testified as follows:

Clerk: Please have a seat in the witness chair and state your full name for the record.

Witness: My name is Bobby Richardson.

The Court: Okay. Your witness, Mr. Lucas.

Mr. Lucas: Thank you, your Honor.

DIRECT EXAMINATION BY MR. LUCAS

Q Mr. Richardson, where are you employed?
A Darlington County.
Q In what capacity?
A I'm the Road Maintenance Director.
Q How long have you been Road Maintenance Director?
A Since October of 1987.
Q And how long have you been employed with the County?
A Continuously since August of 1973.
Q What position did you hold prior to becoming Road Maintenance Director?
A I was an equipment operator.

Page 91 Line 16

Q Are you familiar with the Road O Church Road?
A Yes, sir.
Q How are you familiar with that road?
A Having maintained this road through the course of my employment with Darlington County as an operator and overseeing maintenance in the position I currently have.
Q You say having maintained this road. Is this road maintained pursuant to any deed or other right of way on record that gives the County the right to work this particular road?
A To my knowledge there's no formal dedicated right of way to any part. There's a platted right of way from the old Society Hill Road won to the old former Round O School..

Q Has there been a formal dedication and acceptance of any portion of this road?

A No. Sir.

Bobby Richardson, Cross. Page 101, Lines 23-25

Q 2 and 3 of Plaintiffs from the last hearing show water standing where the old road was. Did the County when you were maintaining the road have from time to time have to work some area in order to keep the water out of the road?

Page 102, Lines 1-10

A There were never any ditches. What we try to do is put some crown in the road so there's not water, you know, standing in the center of the road. However, in a case where you don't have right of way, that's not always possible either.

Q All right. In connection with keeping the road open, will you have enough room with it being a two plow road to also divert the water off of it?

A Not without some drainage structures such as ditches.

James B. Godfrey, III, Direct By Lucas Page 103 Lines 1-10

The Court: Mr. Richardson, let me ask you: do you know why the road ceased to be worked?

Witness Richardson: Yes, sir. There was some contesting of the right of way by Mr. Paul.

The Court: So therefore, you all just stopped working it?

Witness Richardson: Yes, sir, until the courts gave us a decision.

The Court: All right. Anyone else?

(No response.)

James Godfrey - Cross by Milling. Page 118 Lines 6-8

Mr. Lucas: Nothing further, your Honor.

The Court: What about you, Ms. Holloway?

Mr. Holloway: Nothing, your Honor.

Page 119, Lines 5-12

The Court: That property right there, the way he's got the road as it is and the stakes and all that, could you plow that road and not put dirt on either Mr. Paul or Ms. Cribb's property?

Witness Richardson: Your Honor, as Mr. Lucas stated earlier, you can maintain. We have some right of ways that are 12, 15 feet. To use a full

width blade, it would in my opinion not be possible to have a good ---

Alexander Paul, Cross Page 134, Lines 17-22

The Court: Okay. So this is the one you would like the Court to adopt this one from the County?

Witness Paul: Yes, sir, as long as the County stayed within those stakes. But when they go outside and you find a tree in the way that's 12, 14, 16 inches in diameter, something's wrong, your Honor.

Page 140, Lines 20-25

The Court: Mr. Richardson, let me ask you another couple of questions, sir. Did you say -- stand up for me if you would.

(Complied.)

The Court: You can just stay there if you can speak loud enough for her to hear. Did you say that each side to maintain a two plow road, you need 3 feet maximum on each side or did

you mean minimum?

Page 141, Lines 1-11

Witness Richardson: Maximum without drainage structures. And there's never been any drainage structures there, as far as any ditches.

The Court: If you had 2 feet on each side, that would be sufficient?

Witness Richardson: I would prefer 3.

The Court: You mean 3 feet maximum is what you mean?

Witness Richardson: Well, the 2 feet would do it. But, you know, 3 feet's even better.

Page 142, Lines 7-25

The Court: Okay. All right. I'm going to give you about 5 minutes or 10 minutes. Between that time, could I see three counsel, and I'll be back in just a minute.

(A recess was taken.)

The Court: Ms. Holloway, have you all discussed this matter now after my discussions with you?

Ms. Holloway: Yes, your Honor.

Mr. Milling: Your Honor, please, the parties have agreed, as has been pointed out by all surveyors, there are currently existing irons that were placed in the Bonetta Cribb/Edward Cribb property as shown on each of the plats.

The Court: Yes, sir.

Mr. Milling: The parties have agreed to measure in from that 3 feet, basically put in another iron pin in the 3 feet between the existing pin and the new pin would be that area for the spoilage or where the excess --

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The Court: And we're using that plat as drawn by Mr. Godfrey?

Mr. Milling: Yes, sir.

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The Court: Okay.

Mr. Milling: Then from that new pin, come over the distance that the county has used, which I think was 21.9 feet and put a pin there, and then go over another 3 feet and put another pin in, and it would be that -- that 3 feet would represent the spoilage area that would fall on Mr. Paul's land.

The Court: Now, let me ask you: why do you need to have pins other than one end pins, really in essence, 27.9 feet away from that pin? Why do you need to have pins -- I mean, seems to me, why do you want to have ---

Mr. Milling: We can do that. I was just trying to put it so that we would put the road surface in, so that there wouldn't be any question about when the road surface was and where the ---

The Court: Well, the county roads, you have a right of way for that distance, wouldn't you, Mr. Lucas?

Mr. Lucas: Yes, sir.

Mr. Milling: Yes, sir.

The Court: Instead of having a pin in between there, just have one pin on the front of the Cribb property and one pin 27.9 feet from there ---

Mr. Milling: All right, sir.

The Court: --- I guess would be right. Mr. Richardson, he's gone, hadn't he?

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Mr. Lucas: I believe he's out in the hall. But, your Honor, I think that would do it.

The Court: Instead of having pins in between. All right.

Now, what else, Mr. Milling?

Mr. Milling: If your Honor please, that ends up eliminating any questions. And Mr. Paul, I understand, he agreed that he will remove the existing structures as they are now. And, of course, if he chooses to relocate something else, it would be located outside of that 27.9 foot right

of way area in front of the Cribb's home.

The Court: All right, sir. Any posts or whatever are on that 27 foot right of way, Ms. Holloway, Mr. Paul will remove it?

Ms. Holloway: Yes, your Honor.

The Court: Do we have a time on this?

Mr. Milling: We would like to go ahead and get it resolved as soon as we can.

The Court: Well, let's get a time. Let's set a time. Ms. Holloway, how long do you think Mr. Paul needs.

Ms. Holloway: 30 days from the date of the order, your Honor.

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The Court: I would hope so. Can you all imagine any other issues? It seems like this case I've heard now for over a year and each time it's a different issue: whether it be about farm machinery or whether it be

about farming equipment or land or stakes or wires or sprays or whatever else. Anything else?

Mr. Lucas: No sir.

The Court: Mr. Milling?

Mr. Milling: Not that I'm aware of.

The Court: Ms. Holloway?

Ms. Holloway: No sir.

The Court: Okay. Well, Mr. Paul, I appreciate the fact that you've looked up in the dictionary for me and got me the definition of "spray," a liquid flying and small drop-like water

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blown from a wave; that's one definition. Two, you say it's a -- it's like a drop of fine vapor as from an atomizer. And then, three, you've got an instrument as an atomizer for scattering fine liquid. Those are the three definitions of spray.

The fourth one you didn't have in there. It's also a bunch of flowers you put over a coffin. So let's make sure we don't have situations that this thing gets to the extent we start arguing and fighting among yourselves and we have some tragedy. I hope not. I hope we can keep it out of general sessions court.

Mr. Paul: It's been good knowing you on these things, sir.

Mr. Paul: Let me say one thing, judge.

The Court: I'm not sure I want to let you say one thing.

Mr. Paul: This is a case that would make the founding forefathers of this country's bones, dried bones, get up and tremble in their grave.

The Court: Yes, sir. I pledge allegiance to the flag. Okay. Everybody, that's enough. Thank you very much. This case is over.

Mr. Milling, prepare me an order.

Mr. Milling: Yes, your Honor.